UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
                                                  :

BART J. TARULLI,   :

                               :

                   Plaintiff,   :

                               :   19-cv-2039 (LJL)

        -v-   :

                               :   ORDER

AMERIPRISE FINANCIAL SERVICES,   :

                               :

                 Defendant.   :

                               :
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LEWIS J. LIMAN, United States District Judge:

      Plaintiff Bart J. Tarulli, who appears in this action *pro se*, moves, at Dkt. Nos. 34-35, for an extension of time to file a notice of appeal. The motion is granted.

      On September 24, 2020, the Court adopted Magistrate Judge Wang's Report and Recommendation, at Dkt. No. 22, and granted Defendant's motion to dismiss. Dkt. No. 32. On September 25, 2020, the Clerk of Court entered Judgment and attached a Notice of Right to Appeal. *See* Dkt. Nos. 33, 33-1. On January 6, 2021, Plaintiff filed a letter with the Court averring, *inter alia*, that he had received no notice of Judgment, and on January 14, 2021, he filed a motion for an extension of time to file notice of appeal. The motion is unopposed.

      A notice of appeal of a civil judgment must be "filed with the district clerk within 30 days after entry of the judgment or order appealed from." Fed. R. App. P. 4 ("Rule 4") (a)(1)(A). However, Rule 4(a)(6) provides:

> The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:
>
>   (A) The court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be

> appealed within 21 days after entry;
>
> (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
>
> (C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6). Federal Rule of Civil Procedure 77(d) provides: "Immediately after entering an order of judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b)." Fed. R. Civ. P. 77(d).

It does not appear that Plaintiff has been served with notice of Judgment. There is no record on the docket that Judgment and Notice of Right to Appeal was mailed to petitioner, and there is no affidavit by Defendant of service of Judgment on Plaintiff. Nor has Plaintiff consented to electronic service. Plaintiff avers that he learned of the Judgment only by email from Defendant in December 2020. *See* Dkt. No. 34 at 6; Dkt. No. 35 at 1; *Fam. Dollar Stores, Inc. v. United Fabrics Int'l, Inc.*, 896 F. Supp. 2d 223, 228 (S.D.N.Y. 2012) ("Service via electronic mail is only appropriate if the person to be served in that manner 'consented to it in writing.'") (quoting Fed. R. Civ. P. 5(b)(2)(E)). Finally, Defendant does not oppose Plaintiff's motion, and there is no grounds for finding that Defendant will be prejudiced by granting it.

Accordingly, Plaintiff's motion for an extension of time to file notice of appeal is GRANTED. **Plaintiff's time to file notice of appeal is extended for a period of fourteen days from entry of this order, or until April 30, 2021. Failure to file notice of appeal, by mailing or delivering such notice to the Pro Se Intake Unit, will result in Plaintiff's forfeiture of its**

right to appeal.

IT IS FURTHER ORDERED that Defendant shall send to Plaintiff by email a copy of this Order by 5:00 p.m. today, April 16, 2021.

The Clerk of Court is respectfully directed to mail to Plaintiff a copy of this Order as well as a copies of: the Report and Recommendation, at Dkt. No. 22; the Order adopting the Report and Recommendation, at Dkt. No. 32; and the Judgment and Notice of Right to Appeal, along with the Notice of Appeal form, at Dkt. Nos. 33 and 33-1.

SO ORDERED.

Dated: April 16, 2021
      New York, New York   LEWIS J. LIMAN
                                        United States District Judge